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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,112	02/11/2004	Vincent Charles Conzola	RPS920030163US1	2680
45211	7590	11/29/2005	EXAMINER	
KELLY K. KORDZIK			HESS, DANIEL A	
WINSTEAD SECHREST & MINICK PC			ART UNIT	
PO BOX 50784			PAPER NUMBER	
DALLAS, TX 75201			2876	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	Application No. 10/776,112	Applicant(s) CONZOLA, VINCENT CHARLES	
	Examiner Daniel A. Hess	Art Unit 2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-17 and 24-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-17 and 24-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

Receipt is acknowledged of Appeal Brief filed 9/29/2005.

PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below. In brief, the appellants arguments with respect to the tunnel of Bellis are convincing (see pages 6 and 7 of recent Appeal Brief). Therefore the examiner creates herein a new rejection, starting first with the system of Novak, in which all interactions take place within an enclosed area to deal expressly with the issue of doubling of items (column 7, line 55 to column 8, line 10) and then add the deactivator of Bellis.

To avoid abandonment of the application Appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (the Office action is non-final) or a reply under 37 CFR 1.113 (the Office action is final); or
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted- See 37 CFR 1.193(b)(2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 9-17 and 24-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novak (US 5,497,314) in view of Bellis (US 2003/0024982).

Re claim 9:

For the sake of clarity, limitations of the claim are listed below in italics, followed by a discussion of how each limitation is taught in the prior art.

Firstly it is acknowledged that aspects involving deactivating the tag are not taught in Novak; this is the reason for the combination with Bellis.

*A check-out method for a product having a security tag associated therewith, comprising the steps of:*

*storing one or more physical characteristics for said product;*

Novak has a check-out system (column 1, line 10). As disclosed in the abstract, "By use of computerized databases, the digitized signal is compared to the finite set of data for products of approximately the same size, shape, weight and other comparative variables. "

*recalling said one or more physical characteristics when a consumer checks out said product;*

As Novak teaches (column 2, lines 35+):” This identification is made by computerized comparison to the digital image stored in the memory of the system. Alternatively, the identification can be made or confirmed by computerized analysis of the characteristics of the product (such as shape, weight...”

Clearly the characteristics must be recalled from memory of database to make a comparison.

*placing said product in a substantially enclosed area;*

The placement of the product in a substantially enclosed area is clearly shown in figures 1 and 2 and is in evidence throughout Novak.

*examining said product while said product is in said substantially enclosed area;*

*establishing one or more physical features for said product while said product is in said substantially enclosed area;*

Figure 1 shows that all manner of examinations are performed on the product while it is in the enclosed area, ranging from bar code scanning (ref. 16) to size/shape analysis by a camera (ref. 10) to weighing by a scale (ref. 12). See also column 3, lines 15-65.

*comparing said one or more physical characteristics to said one or more physical features;*

As Novak teaches (column 2, lines 35+):” This identification is made by computerized comparison to the digital image stored in the memory of the system. Alternatively, the identification can be made or confirmed by computerized analysis of the characteristics of the product (such as shape, weight...”

*generating a signal if said one or more physical characteristics substantially match said one or more physical features; and*

See column 2, line 30: There is a “precise determination of proper identity.” Identify means find a match (the word match is used 15 times in the specification). After proper identification, one sees (column 5, lines 35-45): “**After the object is identified** by the system of the invention, the microprocessor **produces a signal** to restart the conveyor 1 so as to move the object through the focal plane 11, beyond the focal point 7 and outside the housing 4. “

*deactivating said tag with a deactivation device after receipt of said signal and while said product is in said substantially enclosed area.*

This feature is lacking in Novak and thus Bellis’s teachings on the limitation are employed.

Bellis teaches an automated checkout system meeting many of the limitations of the claim. In addition, as is made clear in paragraph [0040], if an item properly verifies based on physical characteristics, a security tag deactivator causes a security tag to be deactivated.

In view of Bellis' teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known security tag deactivator causes a security tag to be deactivated because in many stores, and particularly clothing stores, products have security tags that must be deactivated during a purchasing transaction. Further, the most likely place for such a deactivator in Novak would be inside the enclosure because this is where all product interactions take place. Novak's entire system is essentially enclosed and there is little room for a deactivator outside the enclosure.

Re claim 10-12, 14: See column 6, lines 30-40: Weight, size and shape are all physical characteristics that Novak uses for comparison.

Re claim 13: Lacking in Novak is a teaching of using color as an identification tool.

Bellis (paragraph [0030]) uses color as an identification tool.

In view of Bellis' teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include color as an identification tool in the teachings of Novak because thus the system can arrive more quickly and accurately at identification of a product.

Re claim 15: Novak's enclosure takes objects one at a time. Novak (column 3, lines 30-50) measures the exact position of the edge of the object and captures its boundaries; clearly the system would detect and prevent the placement of two objects at once. It has been stated (column 3, lines 15-20) that objects are to be examined one at a time.

Re claims 16 and 17: Novak generates an alert to a cashier if another object is detected in the enclosed area (column 7, line 55 to column 8, line 10).

Clearly, deactivation would not then occur because verification in this situation has not been successful.

Re claims 24-29: See discussion re claim 9-14 above. The difference is that claim 24 recites the limitation that a database stores the physical characteristics of the objects. Bellis et al. teaches (see paragraph [0019]) a database for storing this same info.

Re claims 30-32: See discussion re claims 15-17, respectively, above.

### ***Response to Arguments***

Applicant's arguments, see Appeal Brief, filed 9/29/2005, with respect to the rejection(s) of claim(s) 9 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

In brief, the appellants arguments with respect to the tunnel of Bellis are convincing (see pages 6 and 7 of recent Appeal Brief). Therefore the examiner creates herein a new rejection, starting first with the system of Novak, in which all interactions take place within an enclosed area to deal expressly with the issue of doubling of items (column 7, line 55 to column 8, line 10) and then adding the deactivator of Bellis. Then there is no issue of the tunnel of Bellis, because Bellis is the secondary, not primary, reference.



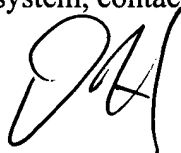
Art Unit: 2876

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A. Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DH  
11/25/2005



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